

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JEFFERY BUSSMAN**

Claimant

VS.

**LANDOLL CORPORATION**

Respondent

AND

LIBERTY MUTUAL INSURANCE CO.

Insurance Carrier

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Docket No. 230,459

## ORDER

Respondent appealed Administrative Law Judge Bryce D. Benedict's March 13, 1998, Order for Medical Treatment.

## ISSUES

Respondent requested Appeals Board review of the following issues:

- (1) Did claimant suffer an accidental injury that arose out of and in the course of his employment with the respondent?
- (2) Did claimant give respondent timely notice of a work-related accident?
- (3) Did claimant serve a timely written claim for compensation on respondent?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

All three issues raised by the respondent are issues that subject a preliminary hearing order to Appeals Board review. See K.S.A. 1997 Supp. 44-534a.

(1) Claimant alleges he injured his low back at work on four separate occasions over a period from November 6, 1996 through December 18, 1997. After the preliminary hearing held on March 11, 1998, the Administrative Law Judge ordered respondent to pay for medical treatment for claimant's low-back injury. Respondent contends claimant's low back condition is a result of an injury that he received while he was at home and then the condition was aggravated while working part-time for a construction company.

Claimant testified he first injured his low back at work on November 6, 1996, when he slipped and fell on a wet concrete floor. Claimant testified, because the fall occurred at the end of his shift, he sought treatment for the injury on his own from a local chiropractor, Michael S. Frank, D.C. Claimant was taken off work for a week by Dr. Frank, and following the treatment, claimant presented Dr. Frank's bill for payment to Ramona Wink, respondent's human relations director. Respondent refused to pay Dr. Frank's bills and claimant paid those bills on his own.

Claimant described his welding job for the respondent as requiring him to lift heavy parts weighing from 50 to 150 pounds off a pallet and place them in a jig to weld into a finished product. After claimant's November 6, 1996, injury, claimant testified his low back became symptomatic from the heavy lifting at work on April 4, 1997, and July 11, 1997. Both times, claimant testified he notified his supervisor, Ken Pippia, his back was hurting because of the heavy lifting and he needed medical treatment. Mr. Pippia refused to authorize medical treatment, and claimant again had to go on his own for treatment to Dr. Frank. After both of these incidents, claimant again presented the chiropractic bills to Ms. Wink for payment. The respondent refused to pay the chiropractic treatment bills.

Finally, claimant on December 18, 1997, after working somewhere between two to four hours into his shift, suffered severe pain in his low back while lifting heavy parts. The pain was so severe he was unable to continue working and sat down in a chair. When he attempted to get up from the chair, he testified the pain was so severe he could not get up. Claimant testified he had a fellow employee contact his supervisor, Ken Pippia, that he needed assistance. When Mr. Pippia found claimant, claimant requested an ambulance and medical treatment. Mr. Pippia again refused to authorize claimant medical treatment and left claimant in the chair in pain. With the help of his father-in-law, who also was employed by the respondent, claimant was taken by private vehicle to the hospital emergency room for treatment.

Claimant was seen by a local physician, Donald A. Argo, M.D. Dr. Argo prescribed pain medication and placed claimant in a physical therapy program. Following a CT scan on December 29, 1997, that showed abnormalities in claimant's low back, Dr. Argo referred claimant to Tim J. Watt, M.D., a neurosurgeon in Lincoln, Nebraska.

Dr. Watt saw claimant on January 6, 1998, prescribed a chair back for claimant, and continued claimant in a physical therapy program. Contained in Dr. Watt's medical record is his opinion that claimant eventually would be required to undergo surgery which would include a fusion. Claimant was instructed to return to Dr. Watt in three months. On the date of the preliminary hearing, March 11, 1998, claimant had returned to work with restrictions of lifting limited to 40 pounds 10 times per hour.

Claimant's supervisor, Kenneth Pippia, also testified in person before the Administrative Law Judge. Mr. Pippia denied claimant ever related his low-back problems to his work. Mr. Pippia testified he did not have any knowledge of claimant's November 6, 1996, accident. Mr. Pippia did testify he knew about the April 7, 1997, July 11, 1997, and December 18, 1997, incidents at work but indicated claimant had told him his low-back problems were unrelated to his work. During cross-examination, however, Mr. Pippia testified he knew the heavy lifting of parts by claimant while working for the respondent aggravated claimant's back. However, Mr. Pippia testified claimant came to work with a bad back caused by nonwork-related activities.

Respondent's principle argument focuses on claimant's part-time job with a construction company. Claimant testified he wallpapered, painted, finished sheet rock, nailed moldings, and roofed homes while working part-time for a construction company during the same time he was employed by the respondent. During his testimony, claimant admitted he had some low-back symptoms while he was working for this construction company.

The Administrative Law Judge found claimant's need for medical treatment was the result of a work-related accident which occurred on December 18, 1997. The Appeals Board finds the preliminary hearing record as a whole supports this finding. X-rays and a CT scan of claimant's low back showed abnormalities of spondylolisthesis at L-5 to S-1 with bilateral pars defect and central disc protrusion at L4-5. Claimant testified he did not have low-back symptoms before he fell at work on November 6, 1996. He then went on to describe two other incidents where he became symptomatic from the heavy lifting required at work. Finally, on December 18, 1997, claimant's heavy lifting at work culminated to the point he was in such severe pain he could not move from a chair.

The only evidence in the record that claimant injured his low back while working part-time for the construction company is claimant's own testimony that following his fall at work on November 6, 1996, his back would, at different times, be symptomatic from the construction company job duties. The Appeals Board concludes it is more probably true than not that claimant's heavy lifting work activities culminating on December 18, 1997, aggravated his preexisting low-back condition resulting in a need for medical treatment.

(2)(3) Respondent also asserts claimant's request for medical treatment should be denied because he failed to notify respondent of a work-related accident within the 10 days as required by K.S.A. 44-520a. Respondent further argues claimant failed to timely serve a

written claim for compensation on respondent within 200 days of the accident as required by K.S.A. 44-520a.

As previously summarized above, claimant testified he told his supervisor, Kenneth Pippia, he injured his back while lifting the heavy parts at work. Mr. Pippia, however, denied claimant notified him at any time that he was injured at work. Since the Administrative Law Judge found only one accident date, December 18, 1997, for preliminary hearing purposes, the Appeals Board will only address whether claimant provided respondent with timely notice or with timely written claim in regard to only that accident date.

The Appeals Board finds the circumstances described by both the claimant and claimant's supervisor, Kenneth Pippia, on December 18, 1997, proves respondent had notice that claimant injured his back at work. Mr. Pippia saw claimant in severe pain sitting in a chair immediately after he had been performing heavy lifting activities. Claimant also testified he told his supervisor, Mr. Pippia, he hurt his back at work on December 18, 1997, and he needed medical treatment.

A written claim for workers compensation benefits dated January 12, 1998, along with a certified mail receipt dated January 13, 1998, signed by a representative of respondent, were admitted into evidence at the preliminary hearing. Therefore, the Appeals Board finds that a timely written claim for compensation was served on the respondent for the December 18, 1997, accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Medical Treatment dated March 13, 1998, entered by Administrative Law Judge Bryce D. Benedict should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1998.

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BOARD MEMBER

c: Frederick J. Patton II, Topeka, KS  
Frederick J. Greenbaum, Kansas City, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director